

FILED *LR*
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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CLERK-SANTA FE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, on the relation

The State Engineer,

Plaintiff,

v.

ROMAN ARAGON, et al,

Defendants.

Case No. 69cv-07941-MV/LFG

Rio Chama Stream System

Section 1 (mainstream)

From: david ortiz, Plebian, Acequia de
Chamita

To the Appeals Court Judge.

Plebian shows cause to Doc.10971

This plebian having been excluded since the 1996 hearing, has been objecting since January of 2010 and in most cases has been ignored and overruled. It is a "sign of the times" we live in. One only has to look at Washington, DC to understand the underlying problem. Washington, from the President, Judges and all the Congress and most Federal, State, County and City Governments are lawyers who are passing and creating "burdensome" laws. That is the way it has been for thousands of years. Read what Jesus Christ told the lawyers of his day, after coming down hard on the religious leaders; Luke 11:46, "Woe to you also lawyers! For you load men with burdens hard to bear, and you yourselves do not lift the burdens with one of your little fingers. Verse 52, "Woe to you lawyers! For

you have taken away the key of knowledge. You did not enter in yourselves and those who were entering in you hindered."

So I will beat my head against the wall some more.

I try to be as honest and factual as I can and that is the reason for requesting a transcript of the court hearing. Unlike the court which operates on a "blank check", I cannot afford the exorbitant fees the court charges. Is it up to me to supply the District Judge with the documents that are in the District Court house? I know more or less the cost, because Ron Rundstrom paid .50\$ a copy for court documents in 2010, when we filed "The Bible, Doc.9657; (attached). We would have liked to have had the record of the 1996 trial of which we have been kept in the dark and uninformed, even by the Lawyer who was supposed to have represented us. It is better to not be represented, then to be mis-represented.

My OBJECTION goes back to the BEGINNING. 1969 Adjudication. Everything since then should be on the table. The State of New Mexico Rules and Regulations recognized the "priority" of prior water users before statehood. Yet they continue to dole out rights without water and will not enforce senior Priority calls as we have seen in the "recent past". They are drowning on our drop of water.

My OBJECTION is to the 1996 stipulation (attached A) that 2 historians made in 1995, one of whom was supposed to represent us. He had put together an "Abstract of Defensible dates for the Rio Chama Acequia Association" giving Chamita an establishment date of 1598. It became a capitulation, for whatever reason, 3 Acequias established the same year, 1600. He presented no proof for his capitulation, just "opinion", which the court accepted.

My OBJECTION is to the Special Masters Recommendation (attached Doc.9546) on December 16, 2009. Thirteen years after the trial. Was she wrong? She could have made that recommendation in 1996. There was no opposition. What happened to the Acequia that was claiming 1598 as she and Francis Levine stated in their court documents. What happened to the Acequia's defenders? Why did they capitulate? Had I not known what I now know, and only knew what she had been fed, I would have made the same recommendation; in 1996. All she saw was the both parties in agreement. To the exclusion of the parcientes they were supposed to be defending.

My OBJECTION is to the Acequia defense Lawyer who did not defend us or represent us, for whatever reason. This is the same lawyer who accepted the Special Masters Report and Recommendation on January 7, 2010, without input or notification of the Acequia Commissioners. This is the same lawyer involved in a rally to convince objectors to the 1600 date to withdraw their objections for fear of winding up with 1714. They convinced some as the court record shows.

My OBJECTION is to the State of New Mexico who says these are separate and individual rights and yet defends the Defense lawyer for accepting the 1600 recommendation for all the "kept in the dark" subfiles, without their input.

My OBJECTION is to the Federal and State Court who has separated me from the 81 Acequia de Chamita members with NOSC and Orders, knowing that a poor dirt farmer could not afford and prevail against all the "expert" lawyers, rules and procedures. Then all you have to do is cite case precedent and the 81 won't have to be dealt with one by one. The State can have their cake and eat it too.

My OBJECTION is to the States FoF, Doc.10892, (attached) which the court should have examined, separated fact from opinion, and did not. See Doc.10939.

My OBJECTION Doc.10959, was made to Magistrate Judges FoF Doc.10939. The Judge's FoF completely overlooked the Historical Fact on the table, the Acequia, where are they doing planting, irrigating and harvesting out of an irrigation ditch? Is there ever mention of any being done on the east side of the Rio Grande? NO. Is it all being done at an Indian Pueblo the Spanish occupied, which they named San Gabriel? YES. Where they traveled, where documents were sent from, who they were, what their names were, who did what, who said what does not matter unless it is running water.

My OBJECTION is to the State claiming all the members or subfiles as they like to call them were served previous to 1996 and the Special Master made them admit, it was not so, under Order. It took 2 years. And still all have not been. Lawyers & Commissioners cannot speak for the individuals, unless they are on a leash.

My OBJECTION is to the court and the enforcement of civil procedure. The court accepted all the experts "opinion" as fact, but made sure the dirt farmer's facts were ignored and overruled as opinion.

The Woman's blindfold was removed and used as a gag over the plebians mouth. What went on the scales of Justice and Judgment? The Court saw an "expert", who I might add is on the courts payroll, vs the ignorant plebian dirt farmer.

Why do I get the sense that adjudication will triumph over truth.

There is not an ounce of doubt that the Ortiz's have a right to use water out of the Rio Chama and that it is pre-New Mexico Statehood. And that it was not 1714 as the States historian was contending. He knew the establishment was not 1714 and not knowing State Law, the intent to abandon, he was claiming any and all Acequias prior to 1680 were abandoned, beginning in 1610, according to him. He has no skin in the issue. The issue is the True Historical Establishment Date of this Acequia of Chamita. Is it August 11, 1598 or 1600?

Separate fact from opinion. Begin with the "Findings of Facts"; Stanley Hordes, John Baxter, Fred Waltz, Vicki Gabin, Ron Rundstrom, Ed Newville, David Ortiz and Lorenzo Garcia. What is based on contemporary Historical fact first and second "where is planting, irrigating, and harvesting being done out of an Acequia?"

THE ISSUE IS, "WHERE IS THE August 11, 1598 ACEQUIA?" What does the contemporary Historical fact state? Is there any evidence of planting, irrigating, harvesting, work having to do with an irrigation system, being done by the Spanish, on the "east" side of the Rio Grande? Doesn't all the evidence show that it is all being done at the Indian pueblo, the one they named San Gabriel? Are there 1, 2 or 3 Acequias constructed in 1600 in the Historical record?

List all the dead testifying witnesses that say it was being done on the east side of the Rio Grande in an Indian Pueblo they named San Juan.

List all the dead testifying witnesses that say it was being done in the Indian Pueblo they named San Gabriel. Don't forget the Friars.

And don't forget the one and only date of Acequia construction stated in the Historical Documents.

LET US EXAMINE WHAT HAS BEEN SUBMITTED TO THE COURT AS FACT.

(Only what pertains to the Acequia.)

Stipulation (attached A) June 8, 1995 and Order Adopting Stipulation Nov.7, 1995.

2. False. Confuses the issue. (The advance party arrives at a pueblo they name San Juan. (For the present record), There is no more San Juan, it is now Ohkay Owingeh.)

3. False. (There is no evidence of an Acequia being dug on the “east” bank of the Rio Grande.)

4. False. (There is no evidence of a 1600 move to a new settlement across the Rio Grande to a location directly west of the Pueblo of San Juan. What is true is that first settlement is between the lesser and the larger river at a partially abandoned Pueblo of Yuque-Yunque (Owingeh), which the Spanish named “San Gabriel”, from the beginning.)

5. True. (If you use the August 11, 1598 construction date. There is construction recorded of only one irrigation ditch in the Historical documents.

Stanley Hordes, Exhibit E, (attached) entered at 1996 hearing.

True. (1540-2) Page 3: Under the Command of Captain Francisco de Barrionuevo, the party stopped at Yunque, the future site of San Gabriel and the area served by the Acequia de Chamita. The chronicler of the expedition described “two very beautiful pueblos which were on opposite sides of the river . . . [with] abundant provisions,” referring to Yunque, on the west bank and San Juan, on the east bank.¹ (See source of Note 1.)

False. Page 4: Exactly one month later, work began on an Acequia on the east bank of the Rio Grande, the labor provided by some one thousand five hundred pueblo Indians.³ (Note 3 references what would be States Exhibit 19. One cannot find east bank of the Rio Grande in that Historical Document. The Judge heard the state historian so state.)

False. Page 4. By the fall of 1600 Demographic pressures had forced Onate to move his capital from San Juan to the west bank of the Rio Grande. (no notes, no pressure, no record of a capital move, no west bank.)

False. Page 5. The settlement of Yuque-Yunque took on the new name of San Gabriel de Yunque, (The name was already given to that Indian Pueblo on September 8, 1598. (See States Exhibit 5) No new name in 1600.)

False. Page 5. Misleading. The new colony used an Acequia from the Rio Chama for the irrigation of crops. (See conclusion of Hordes report)

True. Page 5. Misleading by omission. Seventeenth-century Franciscan historian Juan de Torquemada chronicled this important development: San Gabriel . . . is situated between two rivers, and the waters of the smaller of the two irrigates wheat, barley, corn, and other crops that they plant in gardens.⁴ [Exhibit 1} (Why and what does he leave out between Gabriel . . . is? It tells you the name of the place where the journey came to a halt, where he placed his camp and settlement, where the Acequia is?) (See Defendants Exhibit NN)

False. Page 5. Thus irrigation of lands that today are served by the Acequia de Chamita began as early as 1600. (Earlier)

Conclusion: Analysis of primary archival documentation indicates that irrigation was initiated at Chamita as early as 1600, the date that Onate's colony constructed the first ditch. (Based on the primary archival documentation, "How many ditches did Onate construct? What date does the first and only ditch in the primary archival documentation give? 11 August 1598)

True Conclusion: These experts can bs the court, but they can't bs this Spaniard.

Fred Waltz, Acequia de Chamita Attorney, 96 June 24, (Before the hearing.)

The aforesaid lay witnesses will provide testimony and evidence regarding their genealogies; the oral history of the settlement of the communities of the lower Rio Chama Valley in the vicinity of the Acequia Chamita, Hernandez, and Los Salazares; and the importance of adjudicating the correct priority dates in recognition of the settlement by Onate and other colonists from 1598 until the

Pueblo Revolt of 1680. (And he serves them all with a copy. Now we will look at his FOF, April 2, 1997, which he does not provide the lay witness, Defendants mind you, with a copy. And he does not provide them with the 1995 capitulation. Never trust a lawyer. Don't watch his mouth, watch over what he does.)

Fred Waltz, FOF, 97 April 2.

1. True, both of them.
2. False. See Stipulation above.
3. False.
4. False.
5. True. (Mr. Waltz gives an instant replay of the Stipulations.)
9. True. (One has to research the quoted dates)
- 22-51. True.
52. False
53. True. Historical establishment date.
54. True.

Conclusions:

1. First line False. Second line True.
2. True.
3. True. (And in 1598, 1599, 1600, 1601, 1602, etc., etc.)
- 4 & 5. True
7. False.

13. True. (Both the State and the Defense failed to provide clear and convincing evidence of a priority date of 1600 for these Acequias.)

Special Masters Report, Doc.9546,12/16/2009.

Stipulated Facts, page 3. (These are an instant replay of the stipulation.)

II. Findings of Fact. Documentary evidence.

1. False. (No evidence presented for a move.)

3. True. (The dates are in question.)

4. True. (The 1612, 1615 dates are in question.)

12. True.

False. Page 10. I have relied on the documentary evidence and the parties stipulated facts to conclude the first use of water by the three ditches is 1600. (What evidence? The Stipulators failed to provide the court with any evidence for Acequia construction, establishment date of 1600. If there is no evidence the conclusion and the recommendation must be set aside.)

State of New Mexico FOF, Doc.10892.

1-3. True.

4. True. (The pueblo consisted of more than 1 part. Chamita is in the San Juan Pueblo Grant. There are still today, 2 parts of the same pueblo on the west side of the Rio Grande.)

5. True.

6. False. (The historical documents do not identify San Juan and or San Juan Bautista as being on the east side of the Rio Grande. There is no exclusion of the parts of the same tribe, then or now.)

7. True. (It was a display of military force. The Indian pueblos would now be ruled by Spain.)

8. False. (States Exhibit 18, page 262. There is no such statement. The State historian said H/R translated from the Ytenerario. Why did they add, "we went to San Juan", on the 10th of August?")

9. True.

10. False. (Whether you read it in English or Spanish, It is the city of their father, San Francisco.)

12. False. (No evidence to support a city named San Francisco or that it would be the name of the capital city.)

13. True. The church was "of" San Juan Bautista and not "in".

16. True.

17. First part False, second part True. (No new city of San Francisco.)

18. False. (See 21 below.)

19. False. (No historical reference is found for an Acequia on the east side of the Rio Grande, no matter how many times you repeat it. Produce the silver bullet.)

21. (Where documents are prepared at has no bearing on the Acequia. Is there anything in the documents concerning planting, irrigating, harvesting out of an Acequia? If San Juan is the capital, why build a new one? The poetic translators used capital for Real. Real in this context deals only with the "Royal" Spanish Government. Spanish Cities and men can be Real without being a capital.)

23. The state includes Velasco, but excludes what he wrote and where he was at when he wrote it. (States Exhibit 26, pp608-9) March 22, 1601. We have been here three years. Written at San Gabriel.

24. Do the documents tell of an Acequia?

25. False. (No historical documents.)

26. False. (Zaldivars letters do not mention a 1600 Acequia construction date.)

27. True.

28. False. (The historical record does not support 1600 acequia construction.)

CONCLUSION: All the facts are false, the conclusion is false. You cannot build truth on a lying foundation.

Defendant Ortiz FOF, doc.10893, The Judge listed 1-13, 21-29, 31-39, 55. Starting at 14:

14-20. True. Historically factual.

21. False. Not factual. (State Exhibit18, p262, "we went to San Juan," is not included. And if what I state for the State is true, it's applicable to me. H/R added it. And if it is a translation of the Ytenerario, then it is wrong. What is true is that the San Juan name is applicable to all the same tribes pueblos, both sides of the river.)

22-30. True. You don't find any church built in Gentile (barbarian) San Juan Pueblo. All the evidence puts them in the Catholic Spanish pueblo, which was formerly Indian.

31-40. True.

41. There are no other Acequias mentioned in the Historical documents.

42-50. True. (Doc.9917 (attached) shows Ortiz genealogy)

52-54. (There is no historical evidence for an Acequia anywhere else on August 11, 1598.)

55. True

56. Are all these organizations of people wrong?

Conclusion: We, the descendants (David and Cecilia Ortiz) of those Spanish Colonizers are still here irrigating the same lands; the pueblos, the Indians, the Spanish descendants and the August 11, 1598 Acequia, out of the smaller Chama river; are still here. Amen and Amen.

The Magistrate Judges findings have been objected to: expert opinion has trumped historical evidence. I was objected to and sustained, I could not speak and my evidence did not "speak".

STATE OF NEW MEXICO vs Ramon et al, Aug.7 1969.

IV. That the defendants and each of them claim some right to the use of a portion of the aforesaid public waters and that there are others who make claims to said waters and that others should be made parties defendant, on the Court's own action without further notice, as their interests appear, to the end that complete relief may be accorded to all parties. (Don't strike me out on a technicality or because of my poverty.)

VIII. That it is necessary that the Court hear the testimony concerning the rights of the parties to the use of the surface and ground waters which are diverted through the Salazar Community Ditch System in Township 21 North, Range 8 East, San Juan Pueblo Grant, Rio Arriba County; and that the Court hear the evidence concerning that portion of the Rio Chama Stream System and make such interlocutory decrees as are mete and just. (When one is not allowed to speak in back and forth dialogue, how can the decree or order be distributed in a true and equitable measure?)

X. That when the Court has heard all of the testimony concerning surface and underground water rights in each portion of the Rio Chama Stream System, it will be necessary that the court hear and receive all testimony necessary to the determination of all general and specific issues of fact concerning the entire stream system, and make such final findings of fact and conclusions of law and final decree as the Court may direct.

(The key words and phrases are: all testimony, general and specific issues of fact, final findings of fact and then there can be conclusion and a final decree.)

What separates us is the establishment date of the Acequia. The State has hired a historian who has been wrong in the past, (1714) is opinionated and compromises on things and dates that do not pertain to him and because the Court recognizes him as an expert, it does not question his opinions or require facts from him.

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Respectfully Submitted by Defendant David Ortiz,



David Ortiz
(Signature of Defendant)
David Ortiz, Commisloner/Treasurer

DAVID ORTIZ
(Printed name of Defendant)

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Tract 17

Map 22

Subfile 267